

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE CHEROKEE BROWN,

Plaintiff,

v.

A. REILLY, et al.,

Defendants.

No. 2:20-cv-1709 AC P

ORDER

This case was recently reassigned to the undersigned and the trial set before the district judge was vacated after the court received consent to magistrate judge jurisdiction from all parties. ECF No. 167. In light of this case's reassignment, the findings and recommendations filed December 28, 2023 (ECF No. 148), are adopted herein by reference and plaintiff's motion for a temporary restraining order or preliminary injunction (ECF No. 129) will be denied. This case will also be referred for a mandatory pretrial settlement conference and trial will now be set before the undersigned.

Plaintiff has also recently filed a motion for appointment of counsel to represent him at trial. ECF No. 165. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,

1 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.  
2 1990).

3 “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the  
4 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims  
5 *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965,  
6 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden  
7 of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to  
8 most prisoners do not establish exceptional circumstances that would warrant a request for  
9 voluntary assistance of counsel.

10 Plaintiff has not put forth any grounds for appointment of counsel other than that the  
11 attorney he believed would be representing him has stated that they have not in fact agreed to  
12 represent him. ECF No. 165 at 2. This does not establish exceptional circumstances warranting  
13 the appointment of counsel and the request for appointment of counsel for purposes of  
14 representation at trial will be denied. However, in light of the impending trial and the referral of  
15 this case for a settlement conference, the court finds this case would be benefitted by the  
16 appointment of counsel for the limited purpose of representing plaintiff at the settlement  
17 conference and this case will be referred to Sujean Park, Alternative Dispute Resolution  
18 Coordinator, for the purpose of locating an attorney who is willing to accept this limited purpose  
19 appointment.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The December 28, 2023 findings and recommendation (ECF No. 148) are adopted in  
22 full and plaintiff’s motion for a temporary restraining order or preliminary injunction (ECF No.  
23 129) is DENIED;

24 2. Plaintiff’s motion for appointment of counsel to represent him at trial (ECF No. 165)  
25 is DENIED;

26 3. This case is referred for a mandatory settlement conference;

27 4. The Clerk of the Court is directed to contact Sujean Park, Alternative Dispute  
28 Resolution Coordinator, for the purpose of locating an attorney admitted to practice in this court

1 who is willing to accept a limited-purpose appointment to represent plaintiff at the settlement  
2 conference;

3 5. Sujean Park or another representative from the court will be contacting the parties to  
4 coordinate a date for the settlement conference;

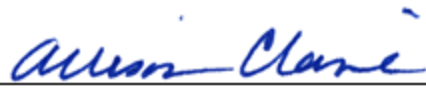
5 6. The parties shall exchange trial exhibits at least thirty days before the first day of trial;

6 7. Motions in limine must be filed fourteen days prior to the first day of trial. Responses  
7 are due seven days after filing of the motion;

8 8. The parties are directed to Local Rule 162.1(a) and Local Rule 163(a) for procedures  
9 regarding proposed voir dire and proposed jury instructions, respectively. The parties shall file  
10 proposed voir dire and proposed jury instructions, if any, no less than fourteen days before the  
11 date set for trial; and

12 9. Jury trial is set for April 15, 2024, at 9:00 a.m. in Courtroom 26 before Magistrate  
13 Judge Allison Claire. Trial is anticipated to last three to four days.

14 DATED: February 15, 2024

15   
16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE  
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